

**TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS**

INITIAL STATEMENT OF REASONS

**Subject Matter of Regulations: Workers' Compensation
Qualified Medical Evaluator Regulations**

**TITLE 8. CALIFORNIA CODE OF REGULATIONS
SECTIONS 100, 104, 105, 106**

BACKGROUND TO REGULATORY PROCEEDING

Senate Bill 228 [Stats. 2003, ch. 639 (SB 228) (Alarcon)], among other things, repealed Labor Code section 139, thereby eliminating the Industrial Medical Council ("IMC"), and amended Labor Code section 139.2 to transfer all authority to the Administrative Director of the Division of Workers' Compensation to regulate (examine, appoint, reappoint, and discipline) physicians who are Qualified Medical Evaluators.

Senate Bill 899 [Stats. 2004, ch. 34 (SB 899) (Poochigian), effective April 19, 2004], among other things, amended the Labor Code in a manner that changed both what Qualified Medical Evaluators must use in evaluating whether medical treatment is reasonable and necessary, the nature and extent of permanent impairment and permanent disability and the procedures for obtaining an evaluator in represented cases with a date of injury on or after January 1, 2005.

California employers are required by existing law to provide and pay for reasonable and necessary medical treatment costs and medical-legal expenses as part of the workers' compensation system. (Lab. Code §§ 3600, 4600.) In contested cases, the injured workers are entitled to a comprehensive medical-legal evaluation performed by Agreed Medical Evaluators or Qualified Medical Evaluators. The medical-legal reports issued by these physicians are used by injured workers and employers to resolve disputes over medical issues and other benefits in workers' compensation claims. (Lab. Code §§ 4060, 4061, 4062, 4062.1, 4062.2, 4067.)

The Administrative Director is required by Labor Code sections 4062.1 and 4062.2 to issue panels (lists of 3 Qualified Medical Evaluators names) to the parties in a workers' compensation case who need a comprehensive medical-legal evaluation report. The Qualified Medical Evaluator report is used to resolve disputed benefit issues in the case. The Qualified Medical Evaluators listed must be selected randomly. (Lab. Code § 139.2(h)(1); Cal. Code Regs., tit. 8 § 31(a).) The party holding the legal right to submit the panel request form also has the right to designate the specialty of the Qualified Medical Evaluators for the panel. (Lab. Code §§ 4062.1(b), 4062.2 (b); Cal. Code Regs., tit. 8 § 31(a).)

The Administrative Director is required to recognize those specialty boards recognized for physicians defined in Labor Code section 3209.3. (Cal. Code Regs., tit. 8 § 12.) Labor Code section 3209.3 defines physicians as “includ[ing] physicians and surgeons holding an M.D. or D.O. degree, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractic practitioners licensed by California state law and within the scope of their practice as defined by California state law.” Effective April 15, 2010, California Code of Regulations, title 16, section 311.1 provides, in relevant part, that “ ... the Board of Chiropractic Examiners recognizes ... those specialty boards that are recognized by the American Chiropractic Association (ACA) or the International Chiropractors Association (ICA).”

Labor Code section 139.2(b)(4)(A) provides that the Administrative Director is required to appoint or reappoint a doctor of chiropractic to a Qualified Medical Evaluator chiropractic specialty if he or she is a doctor of chiropractic and meets, in relevant part, the following requirements:

“(A) Has completed a chiropractic postgraduate specialty program of a minimum of 300 hours taught by a school or college recognized by the Administrative Director, the Board of Chiropractic Examiners and the Council on Chiropractic Education.” (See also Cal. Code Regs, tit. 8, § 11(a)(4).)

To issue a panel in a selected specialty, there has to be at least five (5) active Qualified Medical Evaluators in the specialty at the time the panel selection is requested. In the event less than five (5) Qualified Medical Evaluators are active in a requested specialty, the Medical Director is required to contact the party who holds the legal right to designate the specialty for an alternate specialty selection. (Cal. Code Regs, tit. 8, § 31(d).)

The Administrative Director of the Division of Workers’ Compensation proposes to amend forms used in the Qualified Medical Evaluator’s regulations regarding the appointment and reappointment of Qualified Medical Evaluators and the procedures for obtaining qualified medical-legal evaluations that are used to resolve disputes in the workers’ compensation system. Specifically, the Administrative Director proposes to amend Qualified Medical Evaluator Forms 100, 104, 105 and 106 to include specialties for doctors of chiropractic approved by the Board of Chiropractic Examiners.

The proposed regulations implement, interpret, and make specific Labor Code sections 100, 104, 105, and 106 in Title 8 of the California Code of Regulations.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS

Board of Chiropractic Examiners, Rulemaking File # Z-2009-0512-07

California Code of Regulations, title 16, section 311.1

Report: *Chiropractors and Chiropractic Specialties Report Listed in the Medical Unit’s Qualified Medical evaluators (QME) Database*, March 7, 2011

SPECIFIC TECHNOLOGIES OR EQUIPMENT

None.

FACTS AGENCY RELIES ON IN SUPPORT OF ITS INITIAL DETERMINATION THAT THE REGULATIONS WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON BUSINESS

California employers are required by existing law to provide and pay for reasonable and necessary medical treatment expenses and medical-legal expenses as part of the workers' compensation system. (Lab. Code §§ 3600, 4600.) Physicians appointed as Qualified Medical Evaluators, or selected by the parties as Agreed Medical Evaluators, fall within the definition of small business, and are already required by existing law to comply with the statutes and regulations governing the process for providing and obtaining comprehensive medical/legal evaluation reports in the workers' compensation system.

The Administrative Director is required by Labor Code sections 4062.1 and 4062.2 to issue panels (lists of 3 Qualified Medical Evaluator's names) to the parties in a workers' compensation case who need a comprehensive medical/legal evaluation report from a Qualified Medical Evaluator. The report is used to resolve disputed benefit issues in the case. The party holding the legal right to submit the panel request form also has the right to designate the specialty of the Qualified Medical Evaluators for the panel. (Lab. Code §§ 4062.1(b), 4062.2 (b).) The Qualified Medical Evaluators listed must be selected randomly. (Lab. Code § 139.2(h)(1); Cal. Code Regs., tit. 8 § 31(a).)

The Administrative Director has concluded there is no significant adverse economic impact on Qualified Medical Evaluators as small businesses by the adoption of these proposed regulations. The proposed amendments to the Qualified Medical Evaluator forms 100, 104, 105 and 106 will not have a significant adverse expense on business. The cost of qualified medical-legal evaluations by chiropractors with the proposed chiropractic specialties, like any other medical-legal expense, would be covered by the employer's workers' compensation insurance or approved system for self-insurance as part of the workers' compensation system.

Article 10. Qualified Medical Evaluator Application Forms (QME Forms 100 and 104)

Section 100 The Application for Appointment as Qualified Medical Evaluator Form

Specific Purpose of Section 100: This section consists of the form that physicians applying to become certified as a Qualified Medical Evaluator must complete and file with the Medical Unit. This form is amended at page 6 to add the following Qualified Medical Evaluator specialty code designations relating to chiropractic specialties:

DCN Chiropractic Neurology
DCO Chiropractic Orthopedic
DCS Chiropractic Sports Medicine

Necessity: See discussion of necessity below.

QME Form 100 is further amended at page 2, Block 3, to delete the word “Residency” in the last box and to substitute it with the word “Fellowship.”

Necessity: This change is a non-substantive typographical error correction.

Consideration of Alternatives: No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 104 The Reappointment Application as Qualified Medical Evaluator Form

Specific Purpose of Section 104: This section consists of the form to be used by Qualified Medical Evaluators seeking reappointment. This form is amended at page 5 to add the following Qualified Medical Evaluator specialty code designations relating to chiropractic specialties:

DCN Chiropractic Neurology
DCO Chiropractic Orthopedic
DCS Chiropractic Sports Medicine

Necessity: See discussion of necessity below.

Consideration of Alternatives: No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

ARTICLE 10.5. QUALIFIED MEDICAL EVALUATOR PROCESS FORMS (QME FORMS 105 AND 106)

Section 105 The Request for Qualified Medical Evaluator Panel—Unrepresented Form and Attachment to Form 105 (How to Request a Qualified Medical Evaluator If You Do Not Have an Attorney)

Specific Purpose of Section 105: This form is used to request a Qualified Medical Evaluator panel (a list of three randomly selected Qualified Medical Evaluators of a specified specialty) by parties in an unrepresented case. This form is amended at page 3 to add the following Qualified Medical Evaluator specialty code designations relating to chiropractic specialties:

DCN Chiropractic Neurology
DCO Chiropractic Orthopedic
DCS Chiropractic Sports Medicine

Necessity: See discussion of necessity below.

Form 105 is further amended at page 3 to correct the specialty codes for medical doctors (M.D.)/doctors of osteopathy (D.O). The specialty code MMO is amended to delete the language

“Orthopaedic Surgery Internal Medicine or Radiology,” and substitute it with the language “conditions related to tumors, cancer.”

Necessity: This change will eliminate a current problem which causes delays in parties getting the correct specialty. Non-physicians mistakenly select MMO because the descriptor of the specialty contains the word “orthopaedic.” It has been discovered that the non-physician party really means to select an orthopaedic specialty. Orthopaedic specialties are covered by other specialty codes such as MOS-Orthopaedic Surgery (*other than Spine and Hand*), MNB-Spine, or MHH-Hand.

QME Form 105 is further amended on a non-substantive basis for clarification purposes and to facilitate data input. At page 1, under “Specialty Requested,” the phrase “Use of 3 letter code only” is moved on top to state “3 letter code required.” At page 1, under “Reason QME Panel is being requested,” new language is added to state “Read attachment ‘How to Request a QME’ before the phrase “check one box only,” and the punctuation has been corrected in that paragraph. At page 1, under “Answer each question below:,” the boxes and corresponding words “yes, no,” and the phrase “If yes:” have been inserted as they were missing due to clerical error. At the end of page 2, before the last paragraph, the signature line has been corrected to state Signature of “Requestor” and the phrase “Injured Employee” has been deleted. Further information which appears in the front of the form has been repeated to state: “Requesting party check one only:” and boxes have been inserted with the following words next to them: “Injured Worker,” Claims Administrator,” and “Defense Attorney.”

Necessity: These changes correct clerical errors, clarify the forms and facilitate data input.

Consideration of Alternatives: No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

Section 106 The Request for Qualified Medical Evaluator Panel—Represented Form and Attachment to Form 106 (How to Request a Qualified Medical Evaluator in a Represented Case)

Specific Purpose of Section 106: This form is used to request a Qualified Medical Evaluator panel (a list of three randomly selected Qualified Medical Evaluators of a specified specialty) by parties in a represented case. This form is amended at page 3 to add the following Qualified Medical Evaluator specialty code designations relating to chiropractic specialties:

DCN Chiropractic Neurology
DCO Chiropractic Orthopedic
DCS Chiropractic Sports Medicine

Necessity: See discussion of necessity below.

Form 106 is further amended at page 3 to correct the specialty codes for medical doctors (M.D.)/doctors of osteopathy (D.O). The specialty code MMO is amended to delete the language “Orthopaedic Surgery Internal Medicine or Radiology,” and substitute it with the language “conditions related to tumors, cancer.”

Necessity: This change will eliminate a current problem which causes delays in parties getting the correct specialty. Non-physicians mistakenly select MMO because the descriptor of the specialty contains the word “orthopaedic.” It has been discovered that the non-physician party really means to select an orthopaedic specialty. Orthopaedic specialties are covered by other specialty codes such as MOS-Orthopaedic Surgery (*other than Spine and Hand*), MNB-Spine, or MHH-Hand.

Form 106 is further amended at pages 1 and 2 for non-substantive reasons. The paragraphs in the form at pages 1 and 2 are reorganized. The various paragraphs have been moved to allow more effective use of the form and to facilitate data input. The substantive information contained in the form has not been changed.

Form 106 is also amended for non-substantive reasons at page 1, under “Answer each question below;” the boxes and corresponding words “yes, no,” and the phrase “If yes:” have been inserted as they were missing due to clerical error. The punctuation is also corrected in that paragraph to delete the question mark.

Necessity: These changes correct clerical errors, clarify the forms and facilitate data input.

Consideration of Alternatives: No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

Necessity for amendments Regarding Chiropractic Specialties in QME Forms 100, 104, 105, and 106

The changes regarding chiropractic specialties in Forms 100, 104, 105, and 106 are made because the Administrative Director is required to recognize those specialty boards recognized for physicians defined in Labor Code section 3209.3 (Cal. Code Regs., tit. 8 § 12), and Labor Code section 3209.3 includes chiropractic practitioners in the definition of physicians.

By formal rulemaking effective April 15, 2010, the Board of Chiropractic Examiners has recognized specialty boards that are recognized by the American Chiropractic Association or the International Chiropractors Association. (Cal. Code of Regs., tit. 16 § 311.1.)

The Board of Chiropractic Examiners, Rulemaking File # Z-2009-0512-07 (BCE rulemaking file) contains the specialty board approval criteria used by the American Chiropractic Association and the International Chiropractic Association as approved by the Office of Administrative Law. (See, Board of Chiropractic Examiners, Rulemaking File # Z-2009-0512-07, Notice of Approval of Regulatory Action, OAL File No. 2010-0201-02 S, dated March 16, 2010.)

The BCE rulemaking file reflects that the American Board of Chiropractic Specialties (ABCS) is the branch of the ***American Chiropractic Association (ACA)*** that governs chiropractic specialties. (See, the Board of Chiropractic Examiners, Rulemaking File # Z-2009-0512-07, Table of Contents, Underlying Data, Part 5, Letter C; E-mail correspondence from Gary A. Longmuir, Secretary of the American Board of Chiropractic Specialties to Robert Puleo, Interim Executive Officer of the Board of Chiropractic Examiners, dated October 20, 2009.)

The BCE rulemaking file contains information “specific to the [Department of Veterans Affairs] and chiropractic practice ... and a summary on chiropractic specialties as provided by ... the American Board of Chiropractic Specialties (ABCS).” (See, the Board of Chiropractic Examiners, Rulemaking File # Z-2009-0512-07, Table of Contents, Underlying Data, Part 5, Letter C; E-mail correspondence from Gary A. Longmuir, Secretary of the American Board of Chiropractic Specialties to Robert Puleo, Interim Executive Officer of the Board of Chiropractic Examiners, dated October 20, 2009.) The BCE rulemaking file sets forth the credentials and chiropractic education in a Department of Veterans Affairs’ correspondence (IL 10-2004-011) dated August 23, 2004, and Attachment A. Attachment A sets forth the chiropractic education at pages A-1 to A-2. At pages A-2 to A-6 the chiropractic post-graduate education and training is addressed, and descriptions of full-time and part-time chiropractic residency programs are discussed. The specialty, the specialty requirements, and the eligibility for diplomate status after examination by the approved Specialty Certification Boards are provided at page A-3. (See Board of Chiropractic Examiners, Rulemaking File # Z-2009-0512-07, Table of Contents, Underlying Data, Part 5, Letter C.)

The BCE rulemaking file contains a comment submitted by the American Board of Chiropractic Specialties, Frederick Carrick, President, dated June 5, 2009. (See, Board of Chiropractic Examiners, Rulemaking File # Z-2009-0512-07, Table of Contents, Written Comments, Part 12, 45-Day Comment Period.) It is unclear from the rulemaking file whether this comment was accepted or rejected by the Board of Chiropractic Examiners in the final statement of reasons.¹ At pages 10-11, the President of the American Board of Chiropractic Specialties indicates the current American Chiropractic Association’s recognized Specialty Boards. The list is set forth below in full:

1. American Board of Chiropractic Internists
2. American Chiropractic Neurology Board
3. American Chiropractic Board of Nutrition
4. American Chiropractic Board of Occupational Health
5. American Board of Chiropractic Orthopedics
6. American Chiropractic Board of Radiology
7. American Chiropractic Board of Sports Physicians
8. American Chiropractic Board of Thermography
9. American Chiropractic Rehabilitation Board

With regard to the specialty board approval criteria used by the ***International Chiropractic Association (ICA)***, the BCE rulemaking file provides a list of “approved chiropractic specialty programs.” (See, Board of Chiropractic Examiners, Rulemaking File # Z-2009-0512-07, Table of Contents, Underlying Data, Part 5, Letter D.) The BCE rulemaking file sets forth the requirements

¹ A second comment was submitted by the same organization, the American Board of Chiropractic Specialties. This comment, although dated the same date (June 5, 2009) was submitted by Gary A. Longmuir, Secretary and Vice President of the ACA American Board of Chiropractic Specialties. This comment was addressed in the final statement of reasons by the Board of Chiropractic Examiners.

for the specialty and the eligibility for diplomate status in the “Current Chiropractic Diplomates” list for the International Chiropractic Association. (See, Board of Chiropractic Examiners, Rulemaking File # Z-2009-0512-07, Table of Contents, Underlying Data, Part 5, Letter D.) This document appears to follow an e-mail communication, dated October 20, 2009, from Charles Davis to Robert Puleo. The subject of the e-mail is “Chiropractic Diplomate Programs,” and it references the “Specialty Programs.” The e-mail states, in relevant part, that “[t]he degrees earned – even within a specialty, such as neurology or orthopedics – come with different titles, depending upon the conferring agency.” It further states that “The American Chiropractic Association (ACA) sponsors 12 diplomate programs; [and] the International Chiropractors Association (ICA), four.”

A general comparison of the two lists of specialties (residency programs) submitted by the American Chiropractic Association and the International Chiropractors Association reveals that the lists appear to be duplicative. For example, both lists contain specialties that appear to have the same or similar (1) name of specialty, (2) description of specialty, (3) eligibility for type of examination, and (4) diplomate status. The following is a list of the combined specialties (e.g., as submitted independently by the American Chiropractic Association and independently by the International Chiropractors Association) and the diplomate status:

(1) **Radiology**—eligible to sit for exam to become a **Diplomate of the American Chiropractic Board of Radiologists (DACBR)**.

(2) **Family Practice**—eligible to sit for exam to become a **Diplomate of the American Board of Chiropractic Internists (DABCI)**.

(3) **Orthopedics**—eligible to sit for exam to become a **Diplomate of the American Board of Chiropractic Orthopedists (DABCO)**.

(4) **Sports Chiropractic**—eligible to sit for exam to become a **Diplomate of the American Chiropractic Rehabilitation Board (ACRB)**.

(5) **Nutrition**—eligible to sit for exam to become a **Diplomate of the American Clinical Board of Nutrition (DACBN)**.

(6) **Chiropractic Occupational Health and Applied Ergonomics (Industrial Consulting)**—eligible to sit for exam to become a **Diplomate of the American Chiropractic Board of Occupational Health (DACBOH)**.

(7) **Applied Chiropractic Science**—eligible to sit for exam to become a **Diplomate of the American Chiropractic Board of Occupational Health (DACS)**.

(8) **Pediatrics**—eligible to sit for exam to become a **Diplomate of the ICA Council on Chiropractic Pediatrics (DICCIP)**.

(9) **Rehabilitation**—eligible to sit for exam to become a **Diplomate American Rehabilitation Board (ACRB)**.

(10) **Philosophical Chiropractic Standards**—eligible to sit for exam to become a **Diplomate of the Philosophical Chiropractic Standards (DPhCS)**.

(11) **Acupuncture**—eligible to sit for exam to become a **Diplomate of the American Academy of Chiropractor Acupuncture (AACA)**.

(12) **Clinical Sciences**—eligible to sit for exam to become a **Diplomate of the American Board of Chiropractic Orthopedists (ABCO) and the College of Chiropractic Sciences (Canada) Fellowship (FCCS) examination**.

(13) **Clinical Neurology**—eligible to sit for exam to become a **Diplomate of the American Chiropractic Neurology Board (DACNB)**.

The list submitted by the International Board of Chiropractors indicates that the International Academy of Chiropractic Neurology (IACN) also has a Diplomate Program. The candidate is eligible to sit for exam to become a **Diplomate of the International Board of Chiropractic Neurology (DIBCN)**.

As the BCE rulemaking file reflects, some of the supporting data submitted by the American Chiropractic Association and the International Chiropractors Association describing the various specialties/diplomate programs they approve appears to be duplicate. The above list is an attempt to set forth one list of specialties that is approved by the American Chiropractic Association or the International Chiropractors Association. (Cal. Code Regs., tit. 8 §12; Cal. Code Regs., tit. 16 §311.1.)

For purposes of the Division of Workers' Compensation's regulatory proceedings, and to insure clarity, the Administrative Director will only select those chiropractic specialties that (1) relate to workers' compensation practices, and (2) insure injured workers access to medical treatment consistent with the Labor Code. The Administrative Director proposes to amend forms 100, 104, 105 and 106 to include the Qualified Medical Evaluators' specialty codes: DCN - Chiropractic Neurology; DCO - Chiropractic Orthopedic; and DCS - Chiropractic Sports Medicine.

On March 7, 2011, the Medical Unit of the Division of the Workers' Compensation prepared a report to determine the number of chiropractors and chiropractic specialties listed in the Medical Unit's Qualified Medical Evaluators (QME) database. (See *Chiropractors and Chiropractic Specialties Listed in the Medical Unit's Qualified Medical Evaluators Database*, March 7, 2011.)

The report reflects that the database contains 831 Qualified Medical Evaluators who are doctors of chiropractic (DC). (See Column No. 2.) Out of the 831 Qualified Medical Evaluators chiropractors, 13 Qualified Medical Evaluators chiropractors are specialized in chiropractic neurology. (See Column No. 3.) Out of the 831 Qualified Medical Evaluators chiropractors, 83 Qualified Medical Evaluators chiropractors are specialized in chiropractic orthopedic. (See Column No. 4.) Out of the 831 Qualified Medical Evaluators chiropractors, 6 Qualified Medical Evaluators chiropractors are specialized in chiropractic sports medicine. (See Column No. 6.) Out of the 831 Qualified Medical Evaluators chiropractors, 3 Qualified Medical Evaluators chiropractors are specialized in

chiropractic rehabilitation. (See Column No. 7.) There are no Qualified Medical Evaluators chiropractors specialized in the area of Chiropractic Radiology (See Column No. 5.)

Pursuant to California Code of Regulations, title 8 section 31(d), to issue a panel in a selected specialty there has to be at least five (5) active Qualified Medical Evaluators in the specialty at the time the panel selection is requested.

As reflected from the report, there are sufficient Qualified Medical Evaluators specialists in the common workers' compensation areas of Chiropractic Neurology (DCN), Chiropractic Orthopedic (DCO), and Chiropractic Sports Medicine (DCS) for a panel selection. (See *Chiropractors and Chiropractic Specialties Listed in the Medical Unit's Qualified Medical Evaluators Database*, March 7, 2011.) These specialties selected reflect chiropractic practices that are common in the treatment of injured workers in the workers' compensation area, and allow for the formation of Qualified Medical Evaluators panels consistent with the requirements of Labor Code section 139.2(b)(4)(A).

The Administrative Director, however, is unable to include the specialties of Chiropractic Rehabilitation and Chiropractic Radiology in the added specialties. The March 7, 2011 report reflects that there are only 3 Qualified Medical Evaluators chiropractors that specialize in Chiropractic Rehabilitation, and there are no Qualified Medical Evaluators chiropractors specialized in the area of Chiropractic Radiology. If the pool of Qualified Medical Evaluators specialized in these chiropractic specialties increases in the future, the Administrative Director will conduct formal rule making to determine whether this specialty may be added to the Qualified Medical Evaluator regulations. (See *Chiropractors and Chiropractic Specialties Listed in the Medical Unit's Qualified Medical Evaluators Database*, March 7, 2011.)